

## REMARKS AND ARGUMENTS

Applicant has amended the above claims in accordance with the recommendations of the examiner.

5 Applicant has further amended claim one to include the limitation that the blades of the applicant's device are bent. No new material is presented. Page 4, line 19.

## CLAIM REJECTION 35 USC § 102

Claim 1 has been rejected under 35 U.S.C. 102(b) as anticipated by Blanchard '387. The Applicant respectfully disagrees to anticipation of claim 1 because Blanchard's device does not disclose a structure to meet claim 1.

The rejection describes Blanchard '387 as disclosing a masonry tuck point tool, termed a "double pointer," comprising a selected tuck blade and at least one remaining tuck blade pivotally attached at a first end. Blanchard's "tuck blade" includes two metal side plates 10 of corresponding shape loosely united, preferably by three studs or rivets, used to securely clamp a heart 18 in position. This tuck blade is pivotally attached at a first end by causing one of the end rivets to enter the socket 16 of the shank member when the said member is in a vertical position, as indicated by the dotted lines in Fig. 1. After the rivet is well seated in the socket 16 the said shank member is forced downward between the plates until the opposite end rivet 14 is seated in the socket 17. This secures Blanchard's tuck blade at a second end. The applicant's tuck blades are attached at a first end in claim 1, omitting the need to be secured at the second end.

In Blanchard's device the wedge shape of the shank member forces the side plates 10 outward at the top. Consequently, the side plates 10 are forced inward at the bottom clamping the heart 18 in proper position. Blanchard's device does not properly function without seating the opposite end rivet 14 in the second socket 17.

5        Additionally, the applicant has amended claim 1 to include a bend in the selected tuck blade as well as the at least one remaining tuck blades. Such a bend is not present and contrary to the teaching and application of Blanchard.

      Claim 10 has been rejected under 35 U.S.C. 102(b) as anticipated by Blanchard '387. Given the above argument that Blanchard '387 does not anticipate the applicant's  
10    claim 1 and in light of the amendment adding a bend to the applicant's tuck blades, the applicant respectfully argues that the rejection of claim 10 under 35 U.S.C. § 102 is properly withdrawn.

      Claim 1 has also been rejected under 35 U.S.C. 102(b) as anticipated by Anderson '346. Anderson '346 does not anticipate the applicant's claim 1 as amended to include a  
15    bend in the tuck blades. Anderson's tuck blades are composed of a relatively thin material, such as spring steel, with a progressively narrowed width (Fig. 2). There is no bend in Anderson's tuck blades (Fig. 1, 2). Such a bend in the tuck blades results in a structural difference between the applicant's invention and the prior art.

      Claims 2 and 10 have been rejected under 35 U.S.C. 102(b) as anticipated by  
20    Anderson '346. The dependant claims, 2 and 10, incorporating the bend from the amended claim 1 are now not anticipated by Anderson '346 for the above argued reasons.

      Claim 1 has also been rejected under 35 U.S.C. 102(b) as anticipated by Bakke '558. However, Bakke '558 does not anticipate the applicant's claim 1 as amended to

include a bend in the tuck blades. Bakke's measuring tool comprises a plurality of flat templates 2. There is no bend in Bakke's templates (Fig. 4). Again, such a bend results in a structural difference between the applicant's invention and the prior art.

Claims 3 and 5 have been rejected under 35 U.S.C. 102(b) as anticipated by  
5 Bakke '558. The dependant claims, 3 and 5, incorporating the bend from the amended claim 1 are not anticipated by Bakke '558 for the above argued reasons.

#### CLAIM REJECTION 35 USC § 103

Claims 2 and 3 have been rejected under 35 U.S.C. 103(a) as being unpatentable  
10 over Blanchard '387. As per applicant's arguments above in reference to examiners 102 rejection, Blanchard does not teach to, disclose, or enable applicant's device, and as such applicant argues that a 103 rejection of applicant's claims in light of applicant's above argument is improper. The pivotal attachment at the first end and the bend in the tuck blades are differences between the applicant's invention and the Blanchard device that  
15 were not obvious at the time of invention to a person having ordinary skill in this art.

Claim 3 has also been rejected under 35 U.S.C 103(a) as being unpatentable over Anderson '346. The applicant respectfully argues that rejection of dependant claim 3 in light of the now amended claim 1 is overcome for the above stated reason.

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## CONCLUSION

In view of the above amendments, remarks and arguments, reconsideration and allowance of the claims as amended is respectfully requested.

5 Respectfully submitted this 13<sup>th</sup> day of July, 2005, by:



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